

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	CC Docket No. 96-45
Federal-State Joint Board on Universal Service	)	
	)	
Pine Belt Cellular, Inc.	)	
Petition for Protective Waiver of	)	
Section 54.209 of the Commission's Rules	)	
_____	)	

To: Wireline Competition Bureau

**PETITION FOR WAIVER**

Pine Belt Cellular, Inc. ("Pine Belt"), pursuant to section 1.3 and 1.925 of the Federal Communication Commission's ("FCC's" or "Commission's") rules,<sup>1</sup> hereby petitions the Commission for a protective waiver of the October 1, 2006 deadline and certain reporting requirements set forth in section 54.209 of the Commission's rules for the filing of an annual compliance report in relation to receipt of high-cost universal service ("USF") support.<sup>2</sup> Due to circumstances described more fully below, a report was recently filed, although responsive information has been on file with the Commission since March 2006.<sup>3</sup>

Pine Belt respectfully requests that the FCC accept its 2006 annual compliance report filing as complete and timely filed. Grant of this petition for protective waiver will enable Pine Belt to maintain its status as an Eligible Telecommunications Carrier ("ETC") and continue to receive high cost support from the universal service fund. Most importantly, a protective waiver will allow Pine Belt to continue providing quality service to its rural customers. Pine Belt has

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<sup>1</sup> 47 C.F.R. § 1.3, § 1.925. Pursuant to § 1.1105, no filing fee applies to this request.

<sup>2</sup> 47 C.F.R. § 54.209.

<sup>3</sup> See Declaration of John C. Nettles, President, Pine Belt Cellular, Inc., attached as Exhibit 1.

provided the Commission with extensive information about its operations from the inception of its request for ETC status to the present time. Grant of the waiver is in the public interest, and will prevent undue hardship to be visited upon Pine Belt and its customers.

### **CIRCUMSTANCES OF HARDSHIP JUSTIFY THIS WAIVER REQUEST**

Pine Belt is a small family-owned provider of cellular and personal communications services to rural and non-rural incumbent local exchange ("ILEC") areas in Alabama. Pine Belt's affiliate, Pine Belt Telephone is a small rural ILEC serving customers in southern Alabama. Both Pine Belt companies have a small staff of regulatory, accounting and technical professionals who allocate their time between multiple tasks for each company.

Pine Belt was certified in May 2002 by the FCC as an Eligible Telecommunications Carrier ("ETC") for non-rural areas in Alabama.<sup>4</sup> In March 2006 Pine Belt filed a Petition for Designation as an Eligible Telecommunications Carrier for the rural ILEC portions of its service territory.<sup>5</sup> That petition, which is on file with the Commission, remains pending and is ripe for decision, and includes detailed information, including maps, that the Commission and USAC seeks in the annual compliance report. Pine Belt currently is aware of its annual reporting obligation, but missed the past reporting deadline because it thought its outside accounting contractor was tracking and meeting all applicable deadlines. All line counts and other necessary information are on file with USAC.

At the time of Pine Belt's initial certification, the FCC had not yet adopted the annual reporting requirement included in Section 54.209, and thus the requirement did not appear on its initial regulatory compliance tracking charts that Pine Belt set up to make sure filings were made

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<sup>4</sup> *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc., Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, Memorandum Opinion and Order, DA 02-1252 (rel. May 24, 2002).

<sup>5</sup> *Pine Belt Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket 96-45, (filed March 2, 2006)

on a timely basis. Some difficulties in Pine Belt's compliance efforts are related to business disruptions related to several natural disasters, including Hurricane Dennis, Hurricane Ivan, Hurricane Katrina, and related infrastructure issues such as electrical power outages and computer crashes.<sup>6</sup> Other factors related to staff and family issues, such as staff family members being deployed to disaster relief efforts and the war in Iraq. In an effort to supplement its in-house compliance efforts, Pine Belt staff began working with the outside accounting firm in Montgomery, Alabama to put together the regulatory filings. Pine Belt staff and its outside accounting firm relied on a list of filing dates it compiled based on information obtained from the USAC website, e-mail newsletters and calendars. Apparently, the annual compliance filing requirement did not appear on any of these USAC sources, and thus this filing did not appear on the master filing calendar. Thus, the annual report compliance filing was not made in 2006 because it did not appear on any of the calendars or reminder lists consulted by Pine Belt or its outside consultant.<sup>7</sup> In addition, USAC failed to make Pine Belt aware of the missed 2006 filing when it provided notice, after the fact, to the company with respect to the 2007 filing requirement. That filing currently is the subject of a separate waiver request currently awaiting decision at the Commission.<sup>8</sup>

Pine Belt has compiled the 2006 report based upon historically available data. Because Pine Belt and its outside contractor did not become aware of the need to preserve certain data until 2007, detailed information responsive to questions about outage reports, unfilled service requests and complaints was not retained and is not currently available. Back-up reporting developed to assess storm and other event related outages and responses was stored on the

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<sup>6</sup> See Declaration of John C. Nettles, President, Pine Belt Cellular, Inc., attached as Exhibit 1.

<sup>7</sup> See Declaration of Rod Ballard, Principal, Jackson Thornton, attached as Exhibit 2.

<sup>8</sup> See *Petition for Waiver of Pine Belt Cellular, Inc.* filed October 30, 2007, DA 07-4592.



separate personal computer of Pine Belt's Plant Operations Manager, but a recent search for that information revealed that certain necessary information was lost in a computer hard drive crash. Management has provided the required data based on personal recollection, and information for 2007 has been provided and is on file with USAC and the Commission. As the Declaration of Pine Belt's President John C. Nettles shows, Pine Belt's management has taken all necessary steps to preserve the required data for future reports, and to continue to provide quality service to its rural customers.

**GRANT OF THIS WAIVER REQUEST IS IN THE PUBLIC INTEREST**

Section 1.3 of the Commission's rules specifies that the Commission may grant a waiver of the application of any of its rules for "good cause shown." Section 1.925(b)(3) provides that the Commission may waive a rule when the specific facts make strict compliance with a rule inconsistent with the public interest. The Commission may take into account considerations of hardship, equity or more effective implementation of overall policy on an individual basis, and courts have affirmed the Commission's power to waive its rules if special circumstances warrant waiver, and grant of the waiver serves the public interest.<sup>9</sup>

Pine Belt respectfully submits that good cause exists to grant a protective waiver of the Commission's rules to protect Pine Belt's ETC status, permit it to continue receiving high cost support, and allowed continued quality service to its customers.

Section 54.209 of the Commission's rules, entitled "Annual reporting requirements for designated eligible telecommunications carriers" provides that a common carrier designated as an ETC shall provide certain annual reporting information by October 1 of each year. This rule has been implemented in a confusing way. As Pine Belt pointed out in reply comments filed

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<sup>9</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. 1990).

November 30, 2007, with respect to the Petition for Waiver and associated Ex Parte comments filed by Gila River Telecommunications, Inc. ("Gila River"), there are several sources of confusion about the Section 54.209 reporting requirement. In the Code of Federal Regulations, following 47 CFR §54.209, there was an "effective date note" stating that because the text of the rule contains information collection and recordkeeping requirements, the rule will not become effective until approval has been given by the Office of Management and Budget ("OMB"). According to a procedural conversation undersigned counsel had with Commission staff, apparently OMB approval was subsequently obtained by the Commission. However, following OMB approval, as Pine Belt pointed out in its Petition, neither the Commission nor USAC included any specific notices about the Section 54.209 reporting requirement on any of its website locations or calendars. Clearly, the filing date was not well-publicized, and, as several carriers have pointed out, most carriers subject to state regulation are not even required to file the report to receive USF support.

Notice of the effective date of the rule should have been more clearly provided to carriers subject to the rule. As the Commission knows, a fundamental principle of the administrative process is notice. Even a more basic equitable principle is that if notice is inadequate, and failure to comply with the rules results in a harsh sanction, then the rules should be waived to prevent an inequitable result. Given such lack of transparency, coupled with disparate treatment in the application of the rule, the sanction for non-compliance is particularly harsh and inequitable.

As Gila River has pointed out to the Commission, the rule is disparately applied to similarly situated carriers based upon the patchwork of different federal and state requirements. Pine Belt's incumbent local exchange ("ILEC") sister company, Pine Belt Telephone Company,

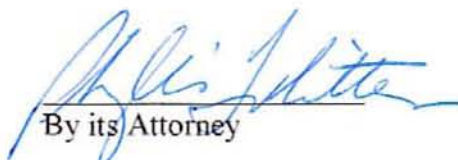
is an Alabama rural ETC. The Alabama Public Service Commission does not require Pine Belt Telephone to make the Section 54.209 filing. The difference in the reporting requirements, coupled with the fact that both Pine Belt Cellular and Pine Belt Telephone share certain administrative resources, including those employed for regulatory reporting, further contributed to the confusion about regulatory compliance requirements for Pine Belt Cellular.

Pine Belt has filed the requested information with USAC, along with all other information USAC needs to process payment of USF funds to Pine Belt. If funds are withheld from Pine Belt, or its ETC designation is at risk, Pine Belt's rural customers will not receive the benefits of service improvements to their rural region. Such result is not in the public interest. Pine Belt respectfully requests that the Commission waive its rules to protect Pine Belt from such a harsh result.

WHEREFORE, Pine Belt respectfully requests that the Commission waive Section 54.209 of the Rules to accept Pine Belt's 2006 report, permit Pine Belt to continue to receive the USF funds to which it is otherwise entitled and maintain its ETC status.

Respectfully submitted,

PINE BELT CELLULAR, INC.

  
By its Attorney

John C. Nettles, President  
Pine Belt Cellular, Inc.  
3984 County Road 32  
Arlington, Alabama 36722

Phyllis A. Whitten  
1629 K Street, N.W., Suite 300  
Washington, D.C. 20006  
(202) 550-0722

Date: February 29, 2008



**Declaration of John C. Nettles**

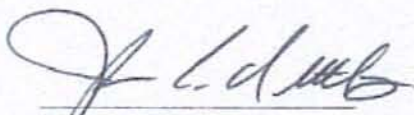
I, John C. Nettles, do hereby declare under penalty of perjury as follows:

1. I am President of Pine Belt Cellular, Inc. ("Pine Belt").
2. This Declaration is submitted in support of Pine Belt's Petition for Waiver ( the "Waiver Petition").
3. I employed the outside consulting and accounting firm Jackson Thornton to work with my personnel to make all necessary USAC compliance filings. I was under the impression that all necessary paperwork had been filed with the FCC and USAC. However, I recently have been informed that an annual compliance report, due October 1, 2006 was not made, due to an inadvertent omission on the deadline filings list, as described in the Petition.
4. In March 2006 Pine Belt filed with the FCC a request for ETC status for the rural portions of its service area. Accompanying that request, in FCC Docket 96-45, are exhibits containing information responsive to the information sought by the FCC and USAC in the annual compliance report. That filing remains pending with the FCC.
5. Absent the requested waiver, Pine Belt risks losing its ETC status for the portions of its service area granted by its 2002 application, and USF funds that otherwise would be used to provide the wireless services in Alabama relied on by its customers both for routine and emergency purposes would also be at risk.
6. Pine Belt's operations have experienced power outages and other disruptions due to several storms, including Hurricane Dennis, Hurricane Ivan and Hurricane Katrina. Pine Belt has continued to provide quality service to its customers.
7. Working with other members of my management team, I have provided information responsive to the reporting requirement. Certain historical details of outages, unfilled service requests and complaints are estimated

based upon personnel recollection, as more detailed information was lost in a computer hard drive crash of my Plant Operations Manager. I have taken steps to develop a data retention and back-up plan to preserve all necessary data for future reports and quality service to Pine Belt's customers.

8. I further declare that I have reviewed the aforementioned Waiver Petition and that the facts stated therein, of which I have personal knowledge, are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.



John C. Nettles  
President

Date 2/28/2008



**Declaration of Rod Ballard**

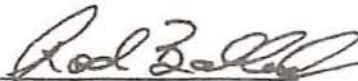
I, Rod Ballard, do hereby declare under penalty of perjury as follows:

1. I am a certified public accountant and Principal in the accounting firm Jackson Thornton in Montgomery, Alabama. I specialize in telecommunications regulatory issues.
2. This Declaration is submitted in support of Pine Belt Cellular Inc.'s ("Pine Belt") Petition for Waiver of Section 54.209 of the Commission's Rules filed in Common Carrier Docket No. 96-45 ("Waiver Petition"). I have been retained to provide accounting and consulting services to Pine Belt, including reviewing Universal Service Fund issues, and assuring Pine Belt's regulatory compliance with the rules and policies of the Federal Communications Commission ("FCC") and the Universal Service Administrative Company ("USAC").
3. I declare and certify as follows: Jackson Thornton maintains, in consultation with Pine Belt Cellular, Inc. a regulatory filing calendar. This regulatory filing calendar is developed in part based upon information provided by the website of USAC and its e-newsletters. The filing in question did not appear on USAC's calendar.

4. Pine Belt's service territory comprises one of the poorest rural areas in Alabama, and indeed the United States. Pine Belt's rural service area is expensive to serve and Pine Belt uses high cost funds to serve rural customers.
5. I declare that to the best of my knowledge, Pine Belt has taken steps to assure future regulatory compliance. Pine Belt's President, John C. Nettles, has retained me to assist him and his staff to make regulatory filings and supervise FCC and USAC filing and regulatory compliance efforts.
6. I further declare that I have reviewed Pine Belt's records and discussed the facts with Pine Belt's President and his staff, and the facts stated above are based upon my personal knowledge and review, and are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Date: 2-28-08

  
Rod Ballard